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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17
18 UNITED STATES OF AMERICA and the
STATE OF CALIFORNIA, by and through the
19 CALIFORNIA DEPARTMENT OF FISH AND
GAME and CALIFORNIA STATE LANDS
20 COMMISSION,

21 Plaintiffs,

22 v.

23 County of Santa Clara, Santa Clara Valley Water
District, City of San Jose, Midpeninsula Regional
24 Open Space District, Myers Industries, Inc.,
Buckhorn, Inc., Guadalupe Rubbish Disposal
25 Company, Inc., Sunoco, Inc., and Newson, Inc.,

26 Defendants.

27 AND RELATED COUNTER, CROSS, AND
28 THIRD PARTY ACTIONS.

NO. CV

CONSENT DECREE WITH
DEFENDANT NEWSON, INC.

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8 California State Lands Commission

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XVII. JUDGMENT 15

1 This Consent Decree ("Decree") is made and entered into by and among the United States
2 of America ("the United States"), on behalf of itself and the Department of the Interior ("DOI"),
3 and the State of California ("State"), by and through the California Department of Fish and Game
4 ("CDFG") and the California State Lands Commission ("SLC"), as trustees for State Natural
5 Resources (collectively, the "Plaintiffs"), and defendant Newson, Inc ("Newson").

6 I. INTRODUCTION

7 A. The United States, on behalf of DOI in its capacity as natural resource trustee, and
8 the CDFG and SLC in their capacities as natural resource trustees for Natural Resources of the
9 State of California (collectively, the "Trustees"), concurrently with the filing of this Consent
10 Decree, have filed Complaints ("Complaints") in this action under Section 107 of the
11 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended
12 ("CERCLA"), 42 U.S.C. § 9607, and various State laws, seeking, *inter alia*, recovery of damages,
13 including damage assessment costs, for injury to, destruction of, and loss of natural resources
14 resulting from releases into the environment of inorganic and organic mercury and hazardous
15 substances contained in mining waste (hereafter, collectively, "Hazardous Substances").

16 B. The Complaints allege that the Defendants (i) are or were owners or operators of
17 facilities in the Guadalupe River Watershed, as defined herein, or (ii) are or were persons who
18 arranged for the disposal of Hazardous Substances at or from facilities in the Guadalupe River
19 Watershed, or (iii) are persons who are successors to or otherwise legally responsible for the acts
20 and omissions of persons who were owners or operators of facilities in the Guadalupe River
21 Watershed or who arranged for disposal of Hazardous Substances at facilities in the Guadalupe
22 River Watershed, from which Plaintiffs allege there have been releases of Hazardous Substances
23 into the environment.

24 C. In February 2000, DOI issued a Preassessment Screen Determination ("PSD")
25 regarding injuries to natural resources arising from historical and continuing releases of mercury,
26 and of other metals resulting from or associated with historic mining within the Guadalupe River
27 Watershed. In that PSD, DOI determined that sufficient information existed for it to pursue a
28 claim for Natural Resource Damages for such releases, including damages for injury to soil,

1 surface water, and sediment in the Guadalupe River Watershed, as well as for injuries to
2 biological resources using those resources, including vegetation, invertebrates, amphibians, fish
3 species, and piscivorous birds. DOI alleges that it took these actions pursuant to CERCLA,
4 DOI's Natural Resource Damages regulations, 43 C.F.R. Part 11 (1998), and Executive
5 Order 12580, as amended by Executive Order 13016.

6 **D.** The Trustees and certain defendants in this action have previously entered into a
7 Consent Decree ("Work CD") pursuant to which those defendants will variously perform or
8 contribute to projects to address all known significant mining waste deposits remaining within
9 and about the Almaden Quicksilver County Park and to restore or rehabilitate the injured
10 resources that are the subject of the Complaints. Additional projects to be undertaken pursuant to
11 the Work CD constitute the replacement or acquisition of equivalent resources providing the same
12 or substantially equivalent services as those that had been provided by the injured natural
13 resources (consistent with 43 C.F.R. § 11.82).

14 **E.** CERCLA and its implementing regulations require that the Trustees seek input
15 from the public before implementing a restoration plan to address injured natural resources.
16 Consequently, the Parties acknowledge that entry of the Work CD after lodging will be deferred
17 to allow the time necessary for the Trustees to obtain public comment on the Work CD and on a
18 draft restoration plan that proposes the projects described in Section VI of the Work CD and is
19 attached thereto as Exhibit B.

20 **F.** The Trustees have undertaken a restoration planning process to determine the
21 restoration projects that will most effectively restore or compensate for the lost use of the injured
22 resources. The details for specific projects are contained in the draft restoration plan at Sections
23 4.3.1.1 through 4.3.2.3 and are summarized in Section VI of the Work CD. A final restoration
24 plan will be adopted by the Trustees after final approval of the Work CD by the Court, after
25 provision of notice, opportunity for public input, and consideration of public comments on the
26 Work CD and attached draft restoration plan.

27 **G.** Newson shall contribute, pursuant to this Consent Decree, towards damage
28 assessment and oversight costs incurred and to be incurred by the Trustees in assessing the nature

1 and extent of natural resource injuries and in overseeing the projects to be performed pursuant to
2 the Work CD.

3 **H.** This settlement is made in good faith after arm's-length negotiations. The Parties
4 agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been
5 negotiated by the Parties in good faith, that settlement of this matter and entry of this Decree will
6 avoid complicated and potentially costly litigation between the Parties, is the most appropriate
7 means to resolve the matters covered herein, and is fair, reasonable, consistent with the purposes
8 of CERCLA, and in the public interest.

9 NOW, THEREFORE, with the consent of the Parties to this Decree, it is hereby
10 ORDERED, ADJUDGED AND DECREED:

11 **II. JURISDICTION AND VENUE**

12 1. The Plaintiffs have alleged that this Court has jurisdiction over the subject matter
13 of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367; Sections 107 and 113(b) of
14 CERCLA, 42 U.S.C. §§ 9607, 9613(b); California Fish and Game Code sections 2104, 5650, and
15 5650.1; and the common law of nuisance; that the Court has personal jurisdiction over Newson;
16 and that venue lies in this District pursuant to 28 U.S.C. § 1391(b), (c) and 1395(a) and Section
17 113(b) of CERCLA. For purposes of this Consent Decree, only, Newson waives all objections
18 and defenses that it may have to jurisdiction of the Court or to venue in this District.

19 **III. APPLICABILITY OF DECREE**

20 2. The obligations of this Consent Decree apply to and are binding upon the Plaintiffs
21 and their departments, agencies and instrumentalities, and upon Newson and its respective
22 successors and assigns.

23 **IV. DEFINITIONS**

24 3. This Decree incorporates the definitions set forth in Section 101 of CERCLA, 42
25 U.S.C. § 9601, and in Section 11.14 of the Natural Resource Damages ("NRD") regulations, 43
26 CFR § 11.14. In addition, whenever the following terms are used in this Decree, they shall have
27 the following meanings:

28 A. "Damage Assessment Costs" shall mean all costs associated with the planning,

1 design, implementation, and oversight of the Trustees' damage assessment process, which
2 addresses the extent and quantification of the injury to, destruction of, or loss of Natural
3 Resources and the services provided by these resources resulting from the alleged releases of
4 Hazardous Substances, and with the planning of restoration or replacement of such Natural
5 Resources and the services provided by those resources, or the planning of the acquisition of
6 equivalent resources or services, and any other costs necessary to carry out the Trustees'
7 responsibilities with respect to those Natural Resources injuries resulting directly or indirectly
8 from the alleged releases of Hazardous Substances, including all related enforcement costs.

9 B. "Date of Entry of this Decree" shall mean the date on which the District Court has
10 approved and entered this Decree as a judgment.

11 C. "Date of Final Approval of this Decree" shall mean (1) the Date of Entry of this
12 Decree, or (2) if an appeal is taken after entry, the date on which the District Court's judgment is
13 affirmed and there is no further right to appellate review.

14 D. "Date of Lodging of this Decree" shall mean the date that this Decree is lodged
15 with the Court, subject to the public comment period referred to in Section XV of this Decree.

16 E. "Guadalupe River Watershed" for purposes of this Decree shall mean (i) the
17 Guadalupe River and all its tributary streams, including without limitation Alamitos Creek,
18 Guadalupe Creek, and Arroyo Calero, and the associated tributaries, reservoirs, impoundments,
19 banks and sediments of each of the foregoing; (ii) all areas that drain water or sediment into the
20 waters described in (i); and (iii) that area of San Francisco Bay south of the Dumbarton Bridge.

21 F. "Interest" shall mean interest at the rate specified for interest on investments of the
22 EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on
23 October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest
24 shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change
25 on October 1 of each year.

26 G. "Natural Resource Damages" shall mean all damages, including loss of use,
27 restoration costs, resource replacement costs, or equivalent resource values, Damage Assessment
28 Costs, and any other costs or losses that have been incurred in the past or will be incurred in the

1 future by the United States, the State of California, or any other person pursuant to Trustee
2 approval, authorization, or direction, with respect to injury to, destruction of, or loss of any and
3 all natural resources resulting either directly or indirectly from the releases of Hazardous
4 Substances in the Guadalupe River Watershed, including any continuing releases.

5 H. "Natural Resources" shall have that meaning set forth in Section 101(16) of
6 CERCLA, 42 U.S.C. § 9601(16).

7 I. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral.

8 J. "Parties" shall mean the United States; the State of California, by and through the
9 CDFG and SLC; and Newson.

10 K. "Plaintiffs" shall mean the United States, on behalf of DOI, and the State of
11 California, on behalf of the CDFG and SLC.

12 L. "Section" shall mean a portion of this Decree identified by a roman numeral.

13 M. "State of California" shall mean the CDFG and SLC.

14 N. "United States" shall mean the United States of America, including its
15 departments, agencies, and instrumentalities.

16 V. PAYMENTS

17 4. Newson shall pay a total of \$475,000 pursuant to the terms specified in this
18 Section.

19 5. Newson shall pay, within ten (10) business days of the Date of Entry of this
20 Consent Decree, the amount of \$100,000 to DOI by electronic fund transfer ("EFT") in
21 accordance with instructions to be provided by DOI to Newson following lodging of the Decree.
22 Such funds are to be utilized jointly by DOI and DFG for the restoration, rehabilitation,
23 replacement, or acquisition of the equivalent of the injured natural resources, in particular for
24 their costs of restoration planning and oversight of the implementation of those projects to be
25 performed pursuant to the Work CD. At the time of payment, Newson shall send written notice
26 of payment and a copy of any transmittal documentation (which should reference DOJ case
27 number 90-11-2-07048) to the Plaintiffs in accordance with Section XVI of this Decree and to:

28 Charles McKinley, Esq.

Office of the Solicitor
U.S. Department of the Interior
1111 Jackson Street, Suite 735
Oakland, California 94607

and

Bruce Nessler
DOI Restoration Fund Manager
1849 "C" Street, N.W.
Mail Stop 4449
Washington, D.C. 20240

6. Within ten (10) business days of the Date of Entry of this Consent Decree, Newson shall make a further payment of \$310,600 to DOI by electronic fund transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Newson following lodging of the Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of California. At the time of payment, Newson shall send written notice of payment and a copy of any transmittal documentation in accordance with the preceding Paragraph.

7. The EFTs and transmittal letters required by the preceding Paragraphs shall reflect that the payment is being made to the "Natural Resources Damage Assessment and Restoration Fund, Account No. 14X5198." DOI will assign those funds a special project number to allow the funds to be maintained as a segregated account (the "Guadalupe River Watershed NRD Account") within the DOI Natural Resource Damage Assessment and Restoration Fund.

8. Within ten (10) business days of the Date of Entry of this Consent Decree, Newson shall make a further payment of \$64,400 to CDFG by certified or cashier's check payable to the Department of Fish and Game and delivered to

John A. Holland
Office of Spill Prevention and Response
Department of Fish and Game
P.O. Box 160362
Sacramento, California 95816-0362

Or, if by courier or overnight mail, to

John A. Holland
Office of Spill Prevention and Response
Department of Fish and Game

VI. COVENANT NOT TO SUE BY PLAINTIFFS

9. Except as specifically provided in Paragraph 12 of this Decree, the United States and the State of California, by and through the CDFG and SLC as trustees for the State of California's Natural Resources, covenant not to sue or to take administrative action against Defendant Newson, as well as the following entities: E.A. Viner International, Inc., n/k/a E.A. Viner Holdings Co.; W.H. Newbold's Son & Co.; Hopper Soliday, Inc.; Fahnestock & Co., Inc., n/k/a Oppenheimer & Co., Inc.; Viner Finance, Inc.; and Fahnestock Viner Holdings, Inc., n/k/a Oppenheimer Holdings, Inc. (collectively, for purposes of Sections VI, VII, VIII, IX, and IX of this Decree, the "Settling Parties"), for costs incurred or to be incurred by the Trustees in assessing natural resource damages in the Guadalupe River Watershed or in overseeing the projects to be performed under the Work CD, under CERCLA, 42 U.S.C. § 9607, the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1321(f), or other federal, State or common law. These covenants take effect upon payment of the amount required in Section V.

10. The United States covenants not to sue or to take administrative action against CDFG, SLC, or the California Department of Transportation ("CalTrans") for costs incurred or to be incurred by the Trustees in assessing natural resource damages in the Guadalupe River Watershed or in overseeing the projects to be performed under the Work CD, under CERCLA, 42 U.S.C. § 9607, the Clean Water Act, 33 U.S.C. § 1321(f), or other federal law. These covenants take effect upon the Entry of this Decree.

11. The State of California, by and through the CDFG and SLC as trustees for the State of California's Natural Resources, and CalTrans covenant not to sue or to take administrative action against the United States for costs incurred or to be incurred by the Trustees in assessing natural resource damages in the Guadalupe River Watershed or in overseeing the projects to be performed under the Work CD, under CERCLA, 42 U.S.C. § 9607, the Clean Water Act, 33 U.S.C. § 1321(f), or other federal, State or common law. These covenants take effect upon the Entry of this Decree.

**VII. RESERVATION OF RIGHTS
FOR NATURAL RESOURCE DAMAGES**

12. Notwithstanding any other provision of this Decree, the United States and the State of California reserve the right to institute proceedings against the Settling Parties in this action or in a new action seeking recovery of Natural Resource Damages (1) based on injury to, destruction of, or loss of Natural Resources resulting from conditions that were unknown to the Trustees as of the Date of Lodging of this Decree ("Unknown Conditions"), or (2) based on information received by the Trustees after the Date of Lodging of this Decree that indicates that there is injury to, destruction of, or loss of Natural Resources of a type unknown to the Trustees as of the Date of Lodging of this Decree ("New Information").

13. Notwithstanding any other provision of this Decree, the covenants not to sue in Paragraph 9 shall apply only to matters addressed in that Paragraph and specifically shall not apply to the following claims:

- a. claims based on a failure by Newson to satisfy any requirement imposed upon it by this Decree;
- b. claims for criminal liability; and
- c. claims arising from the past, present or future disposal, release, or threat of release of hazardous substances not addressed in this Decree.

14. For purposes of Paragraph 12, "Unknown Conditions" or "New Information" shall not include or pertain to (i) a change only in Plaintiffs' quantification of Natural Resource Damages arising out of the past and/or continuing releases of Hazardous Substances alleged by Plaintiffs in this action; and/or (ii) damages based on releases of hazardous substances other than Hazardous Substances as defined herein, unless Plaintiffs can demonstrate that such releases resulted in an injury different in type than those alleged in this action.

15. No information shall be deemed "new," and no condition shall be deemed "unknown," if the information or condition is contained or identified in, or could be reasonably determined from, documents and data in the possession of CDFG, DTSC, the California Regional Water Quality Control Board for the San Francisco Bay Region, DOI, or Region IX of the U.S.

1 Environmental Protection Agency, on or before the Date of Entry of this Decree.

2 **VIII. COVENANTS BY SETTLING PARTIES**

3 16. Subject to Paragraph 17, the Settling Parties hereby covenant not to sue or to assert
4 any administrative claims or causes of action against the United States or against the State of
5 California with respect to the payments required by this Decree, including, but not limited to:

6 a. any direct or indirect Settling Defendant Claim for reimbursement from the
7 Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. §
8 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

9 b. any claims against the United States or the State of California, including
10 any department, agency or instrumentality of the United States or the State of California, under
11 CERCLA Sections 107 or 113;

12 c. any claims against the Guadalupe River Watershed NRD Account; or

13 d. any claims under the United States Constitution, the California
14 Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. §
15 2412, as amended, or at common law.

16 17. The Settling Parties reserve their right to contest any claims alleged to be reserved
17 by Section VII of this Decree, and the Settling Parties do not by consenting to this Decree waive
18 any defenses to such claims, except that the Settling Parties covenant not to assert, and may not
19 maintain, any defense based upon principles of waiver, res judicata, collateral estoppel, issue
20 preclusion, claim-splitting, or other defense based upon the contention that the claims that are
21 allowed by Section VII of this Decree were or should have been brought in the instant case. In
22 the event that either the United States or the State of California brings any claim not settled by
23 this Decree, or pursuant to Section VII of this Decree, the Settling Parties reserve the right to
24 assert all potential counterclaims, cross-claims, or third-party claims against the United States or
25 the State of California arising from such claim. Nothing in this Decree shall be deemed to
26 constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C.
27 § 9611.
28

1 **IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

2 18. The Settling Parties do not admit any of Plaintiffs' allegations or claims set forth
3 herein and deny any liability for Plaintiffs' claims against Newson set forth in the Complaints.

4 19. Nothing in this Consent Decree shall be construed to create any rights in, or grant
5 any cause of action to, any person not a signatory to this Consent Decree. The preceding sentence
6 shall not be construed to waive or nullify any rights that any person not a signatory to this Decree
7 may have under applicable law. Each of the Parties, including the Settling Parties, expressly
8 reserves any and all rights (including, but not limited to, any right to contribution), defenses,
9 claims, demands, and causes of action that it may have against any person not a signatory hereto.

10 20. The Parties agree, and the Court hereby finds, adjudges and decrees, that (1) the
11 Parties have fully negotiated the terms of this Consent Decree at arm's length with the assistance
12 and advice of competent, independent counsel; (2) the consideration exchanged and commitments
13 made herein are reasonable in the context of the rights and responsibilities of the Parties and their
14 potential liabilities; (3) public notice (including a properly noticed public comment period) of the
15 opportunity for submitting comments on the terms and conditions of this settlement has been
16 provided; and (4) the settlement reflected herein is made in good faith and is neither fraudulent
17 nor collusive, nor affected by any fraud or collusion. Accordingly, the Parties agree, and the
18 Court hereby finds, orders, adjudges, and decrees, that this Consent Decree represents a fair,
19 adequate, reasonable, equitable, and good-faith settlement, and that therefore the Settling Parties
20 are entitled to contribution protection provided by CERCLA Section 113(f)(2), 42 U.S.C. §
21 9613(f)(2), or otherwise provided by State or common law, for matters addressed by this Consent
22 Decree. "Matters addressed" in this Consent Decree include only costs incurred or to be incurred
23 by the Trustees in assessing natural resource damages in the Guadalupe River Watershed or in
24 overseeing the projects to be performed under the Work CD, under CERCLA, 42 U.S.C. § 9607,
25 the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1321(f), or other
26 federal, State or common law, but do not include the projects to be performed under the Work
27 CD. The "Matters Addressed" in this Consent Decree do not include those claims as to which
28 any signatory has reserved its rights under this Consent Decree (except for claims for failure to

1 comply with this Decree), in the event that any signatory asserts rights against another coming
2 within the scope of such reservations.

3 21. The Settling Parties agree that, with respect to any suit or claim for contribution
4 brought by them for matters related to this Consent Decree, they will notify the United States and
5 the State of California in writing no later than sixty (60) days prior to the initiation of such suit or
6 claim, unless the giving of such advance notice would subject such suit or claim to a defense that
7 it is barred by the statute of limitations or other time-related defense.

8 22. The Settling Parties also agree that, with respect to any suit or claim for
9 contribution brought against them for matters related to this Consent Decree, they will notify in
10 writing the United States and the State of California within ten (10) days of service of the
11 complaint on them. In addition, Settling Parties shall notify the United States and the State of
12 California within ten (10) days of service or receipt of any Motion for Summary Judgment with
13 respect to such a claim, and within ten (10) days of receipt of any order from a court setting such
14 a case for trial.

15 X. PENALTIES FOR LATE PAYMENTS

16
17 23. If any payment required by Section V is not made by the date specified in that
18 Section, Newson shall be liable for the following amounts for each day such payment is late:

19

<u>Days Late</u>	<u>Penalty</u>
1-14	\$ 2000/day
15-60	\$ 3000/day
Beyond 60 Days	\$ 4000/day

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23
24 24. Payments due under the preceding Paragraph shall be disbursed to the Plaintiff to
25 which late payment is owing. Stipulated penalties are due within thirty (30) days following
26 receipt by Newson of a written demand by Plaintiffs for payment of such stipulated penalties.
27 Stipulated penalties owing to the United States shall, as directed by the United States, be paid by
28 certified or cashier's check in the amount due payable to the "U.S. Department of Justice,"

1 referencing DOJ No. 90-11-2-07048, and shall be delivered to the Office of the United States
2 Attorney, Northern District of California, Financial Litigation Unit, 450 Golden Gate Avenue,
3 Box 36055, San Francisco, California 94102. Notice of such payment shall be sent to the
4 Plaintiffs as provided in Section XVI of this Decree.

5 25. Stipulated penalties owing to the State of California shall be payable to the
6 Department of Fish and Game and delivered to

7 John A. Holland
8 Office of Spill Prevention and Response
9 Department of Fish and Game
10 P.O. Box 160362
11 Sacramento, California 95816-0362

12 Or, if by courier or overnight mail, to

13 John A. Holland
14 Office of Spill Prevention and Response
15 Department of Fish and Game
16 1700 K Street, Suite 250
17 Sacramento, California 95814

18 26. In addition to the stipulated penalties provided in this Section, if any payment
19 required by Section V of this Decree is not made by the date specified in that Section, Newson
20 shall be liable for Interest on the amount due.

21 27. In addition to stipulated penalties and Interest as provided in this Section, if the
22 payment required by Section V of this Decree or the stipulated penalties provided for by this
23 Section are not made, Newson shall be liable for any costs and attorneys fees incurred by
24 Plaintiffs in collecting any amounts owing.

25 28. Payments due under this Section shall be in addition to any other remedies or
26 sanctions that may be available to the Plaintiffs on account of Newson's failure to comply with
27 the terms of this Decree.

28 **XI. CERTIFICATION CONCERNING RECORDS**

29 29. Newson hereby certifies that, to the best of its knowledge and belief, after
30 thorough inquiry, Newson has not altered, mutilated, discarded, destroyed, or otherwise disposed
31 of any records, documents, or other information (other than identical copies) relating to Newson's
32 potential liability regarding Natural Resource Damages with respect to the Guadalupe River

1 Watershed since notification of potential liability by the Plaintiffs and that Newson has fully
2 complied with any and all of Plaintiffs' prior requests for information with respect to this site,
3 pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), or other applicable federal or state
4 laws or regulations.

5 **XII. SIGNATURE**

6 30. The undersigned representative of the Settling Parties certifies that he or she is
7 fully authorized to enter into the terms and conditions of this Decree, to legally execute this
8 Decree, and to bind the parties he or she represents to this Decree.

9 31. This Consent Decree may be signed in counterparts, and such counterpart
10 signature pages shall be given full force and effect.

11 **XIII. ENTIRE AGREEMENT**

12 32. This Consent Decree constitutes the final, complete, and exclusive agreement and
13 understanding between the Trustees and Newson with respect to the settlement embodied in the
14 Decree and supersedes all prior agreements and understandings, whether oral or written. No
15 other document, nor any representation, inducement, agreement, understanding, or promise,
16 constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing
17 the terms of this Decree.

18 **XIV. TERMINATION**

19 33. This Consent Decree shall terminate as to Newson upon payment of the amount
20 required by Section V of this Decree, together with any outstanding stipulated penalties under
21 Section X of this Decree, except that the provisions and effect of Sections VI through IX of this
22 Consent Decree shall survive termination of the Decree.

23 **XV. PUBLIC COMMENT**

24 34. The Parties acknowledge that this Consent Decree will be subject to a public
25 comment period of not less than thirty (30) days. Consequently, entry of the Decree after lodging
26 shall be deferred to allow the time necessary for the United States and the State to obtain and
27 evaluate public comment on this Decree. The United States and the State of California reserve
28 the right to withdraw their consent to this Decree if comments received disclose facts or

1 considerations that show that this Decree is inappropriate, improper, or inadequate. Newson
2 consents to the entry of this Decree by the Court without further notice. Newson further agrees
3 not to oppose entry of this Consent Decree by the Court or to challenge any provision of the
4 Decree, unless either the United States or CDFG has notified Newson in writing that it no longer
5 supports entry of the Decree.

6 35. In the event that there is no Date of Final Approval of this Decree, this Decree and
7 the settlement embodied herein is voidable at the discretion of any Party, and the terms hereof
8 may not be used as evidence in any litigation or other proceeding.

9 **XVI. NOTICE**

10 36. Any notice required hereunder shall be in writing and shall be delivered by hand,
11 facsimile or overnight mail as follows:

12 **As to the United States:**

13 Chief, Environmental Enforcement Section
14 Environment and Natural Resources Division
DOI Case #90-11-2-07048
15 U.S. Department of Justice
P.O. Box 7611
16 Washington, D.C. 20044-7611

17 and

18 David B. Glazer
19 United States Department of Justice
301 Howard Street, Suite 1050
20 San Francisco, California 94105
Tel.: (415) 744-6477
21 Fax: (415) 744-6476

22 and

23 Charles McKinley, Esq.
24 Office of the Solicitor
U.S. Department of the Interior
1111 Jackson Street, Suite 735
25 Oakland, California 94607
Tel: (510) 817-1461
26 Fax: (510) 419-0143

27 **As to State of California:**

28 John A. Holland

Office of Spill Prevention and Response
Department of Fish and Game
P.O. Box 160362
Sacramento, California 95816-0362
Tel: (916) 445-3153
Fax: (916) 324-5662

Or, if by courier or overnight mail, to

John A. Holland
Office of Spill Prevention and Response
Department of Fish and Game
1700 K Street, Suite 250
Sacramento, California 95814

As to Settling Parties:

Lawrence R. Liebesman
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006

37. Each Party to this Decree may change the person(s) it has designated to receive notice for that Party, or the addresses for such notice, by filing a written notice of such change with the Court and serving said notice on each of the other Parties to this Decree.

38. Newson hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XVII. JUDGMENT

39. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the Plaintiffs and Newson. The Court finds that there is

1 no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ.
2 P. 54 and 58.

3
4
5 IT IS SO ORDERED

6
7 DATED: _____

8
9 UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

1 FOR THE UNITED STATES OF AMERICA:

2 WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v.
3 County of Santa Clara, et al., subject to the public notice and comment requirements of
4 Section XIX of this Consent Decree

5
6 Dated: July 25, 2005

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

9
10 Dated: _____, 2005

DAVID B. GLAZER
Natural Resources Section
Environment and Natural Resources Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6491
Facsimile: (415) 744-6476

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18 OF COUNSEL

19 CHARLES C. McKINLEY, ESQ.
20 Assistant Field Solicitor
21 U.S. Department of the Interior
1111 Jackson Street
Oakland, California 94607

1 FOR THE CALIFORNIA DEPARTMENT OF FISH AND GAME

2 WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v.
3 County of Santa Clara, et al., subject to the public notice and comment requirements of
4 Section XIX of this Consent Decree:

5 Dated: _____, 2005

6 L. RYAN BRODDRICK
7 Director
8 California Department of Fish and Game

9
10
11
12 BILL LOCKYER, Attorney General
13 of the State of California
14 GAVIN G. McCABE,
15 Deputy Attorney General

16 By: _____
17 GAVIN G. McCABE
18 Attorneys for Plaintiff California Department of Fish and Game

1 FOR THE CALIFORNIA STATE LANDS COMMISSION

2 WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v.
3 County of Santa Clara, et al., subject to the public notice and comment requirements of
4 Section XIX of this Consent Decree:

5 Dated: _____, 2005

PAUL D. THAYER
Executive Officer
State Lands Commission

10 BILL LOCKYER, Attorney General
of the State of California
11 GAVIN G. McCABE,
12 Deputy Attorney General

14 By: _____
GAVIN G. McCABE

15 Attorneys for Plaintiff California State Lands Commission

1 FOR THE CALIFORNIA DEPARTMENT OF TRANSPORTATION

2 WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v.
3 County of Santa Clara, et al., subject to the public notice and comment requirements of
4 Section XIX of this Consent Decree:

5 Dated: _____, 2005

6 JAY NORVELL

7 Chief

8 Division of Environmental Analysis

1 FOR DEFENDANT NEWSON, INC., AND FOR E.A. VINER INTERNATIONAL, INC.,
2 N/K/A/ E.A. VINER HOLDINGS CO.; W.H. NEWBOLD'S SON & CO.; HOPPER SOLIDAY,
3 INC.; FAHNESTOCK & CO., INC., N/K/A/ OPPENHEIMER & CO., INC.; VINER FINANCE,
INC.; AND FAHNESTOCK VINER HOLDINGS, INC., N/K/A/ OPPENHEIMER HOLDINGS,
INC.:

4 WE HEREBY CONSENT to the entry of the Consent Decree in United Stated, et al. v.
5 County of Santa Clara, et al.:

6 Dated: _____, 2005
7 NAME _____

Title: _____
8 Address: _____
9 _____
10 _____

11 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

12
13 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

14 Name (print): _____

Title: _____

15 Address: _____
16 _____
17 _____

18 Ph. Number: _____
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